

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: ASBESTOS PRODUCTS LIABILITY Civil Action
LITIGATION (NO. VI) No. MDL 875

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This document related To: District of Massachusetts

BEVERLY PEARSON, as Administrator of the Estate of
DONALD PEARSON; and FLORA SMART, as Parent and Next
Friend of ALICE SMART,

Plaintiff,

Civil Action
No.

v.

COMPLAINT

PLAINTIFF DEMANDS
A TRIAL BY JURY

METROPOLITAN LIFE INSURANCE COMPANY
CERTAIN-TEED CORPORATION
GEORGIA-PACIFIC CORPORATION
UNION CARBIDE CORPORATION
GOUVENEUR TALC COMPANY, INC.
ST. LAWRENCE LIQUIDATING CORPORATION
R.T. VANDERBILT COMPANY, INC.,

Defendants.

05 cv 10812

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Now comes the plaintiff, by her attorneys, and
files the following complaint:

Jurisdiction of this Court exists pursuant to 28
United States Code Section 1332. The plaintiff is a
citizen of the Commonwealth of Massachusetts and the
defendants are incorporated in states other than
Massachusetts, and their principal place of business
is in states other than Massachusetts. The matter
arises under the Constitution and under the laws of
the United States. The amount in controversy exceeds
\$75,000 exclusive of interest and costs.

1. PARTY PLAINTIFF

Plaintiff, Beverly Pearson, is the Administrator

RECEIVED 6-37-05
AMOUNT \$ 250.00
SUMMONS ISSUED 4
LOCAL RULE 4.1
WAIVER FORM
MCF ISSUED
BY DPT. CLK. M.P.
DATE 4/26/05

MAGISTRATE JUDGE

of the Estate of Donald Pearson, and resides at 300 Uniroyal Road, Lot #152, Opelika, Alabama 036801. Plaintiff, Flora Smart, is the Parent and Next Friend of Alice Smart, the minor child of Donald Pearson, and resides at 66 Hutchings Street, Roxbury, Massachusetts 02119.

2. PARTY DEFENDANTS

2A. The defendant, Metropolitan Life Insurance Company (hereinafter "Metropolitan"), is a foreign corporation which does or has done business in the Commonwealth of Massachusetts.

2B. The defendant, Certain-Teed Corporation, is a foreign corporation incorporated under the laws of the State of Maryland, with a principal place of business in the State of Pennsylvania, and either has done or is doing business in the Commonwealth of Massachusetts.

2C. The defendant, Georgia-Pacific Corporation, is a foreign corporation having a principal place of business in the State of Georgia and has conducted business in the Commonwealth of Massachusetts.

2D. The defendant, Union Carbide Corporation, is a Connecticut corporation with a principal place of business outside the Commonwealth of Massachusetts and has conducted business in the Commonwealth of Massachusetts.

2E. The defendant, Gouverneur Talc Company,

Inc., is a corporation incorporated under the laws of the State of New York, having a principal place of business outside the Commonwealth of Massachusetts, and has conducted business in the Commonwealth of Massachusetts.

2F. The defendant, St. Lawrence Liquidating Corporation, is a corporation which was incorporated under the laws of the State of New York, having a principal place of business located outside the Commonwealth of Massachusetts. The St. Lawrence Liquidating Corporation is the legal successor to International Talc Company, Inc., which was incorporated under the Laws of the State of New York, having a principal place of business located outside the Commonwealth of Massachusetts, and has conducted business in the Commonwealth of Massachusetts.

2G. The defendant, R.T. Vanderbilt Company, Inc., is a foreign corporation having a principal place of business outside the Commonwealth of Massachusetts and has conducted business in the Commonwealth of Massachusetts.

As used in this Complaint, the terms "defendant", "defendants" or "defendant corporations" shall include the party defendants identified in paragraphs 2A-2G hereof, and their predecessors and successors, which shall include, but is not limited to, any person, corporation, company or business entity: which formed

part of any combination, consolidation, merger or reorganization from which any party defendant was created or was the surviving corporation or other entity, or into which any party defendant was merged, consolidated or reorganized; whose assets, stock, property, employees, customers, good will, products or product line was acquired by or from any party defendant; whose patent rights, trademark rights, trade secrets or goodwill was acquired by or from any party defendant; or, which was dominated or controlled by any party defendant to such an extent that said party defendant was the "alter ego" of said corporation.

3. The plaintiff's cause of action arises from the defendants: (a) transacting business in Massachusetts; (b) contracting to supply and/or sell goods in Massachusetts; (c) doing or causing a tortious act to be done within Massachusetts; and/or, (d) causing the consequence of a tortious act to occur within Massachusetts.

4. Plaintiff's decedent, Donald Pearson, was exposed to defendants' asbestos and asbestos-containing materials while working as a construction laborer, drywall worker, and foundry worker at various sites in the Commonwealth of Massachusetts and other states from approximately 1967 to the 1980's.

5. During the period of time set forth in

Paragraph 4, the plaintiff's decedent was exposed to and did inhale and/or ingest asbestos dust, fibers, and particles, which dust, fibers, and particles came from the asbestos or asbestos-containing products which were mined, milled, manufactured, fabricated, supplied and/or sold by the defendant corporations.

6. The asbestos and asbestos-containing products to which the plaintiff's decedent was exposed were mined, milled, manufactured, fabricated, supplied, and/or sold by the defendant corporations, acting through their duly authorized agents, servants, and employees, who were then and there acting in the course and scope of their employment and in furtherance of the business of the defendants.

7. At all times pertinent hereto, the defendant corporations were engaged in the business of mining, milling, manufacturing, fabricating, supplying, and/or selling asbestos and asbestos-containing products.

8. At all times pertinent hereto, the asbestos products were products mined, milled, manufactured, fabricated, supplied and/or sold by the defendant corporations and reached the plaintiff's decedent without any substantial change in the condition of the product or products from the time that they were sold.

COUNT I

NEGLIGENCE

9. Plaintiff realleges the allegations of

Paragraphs 1 through 8 of the Complaint, and by reference, makes them part of this Count.

10. It was the duty of the defendant corporations to use and exercise reasonable and due care in the manufacture, fabricating, testing, inspection, production, marketing, packaging and sale of their asbestos and asbestos-containing products.

11. It was also the duty of the defendant corporations to provide detailed and adequate instructions relative to the proper and safe handling and use of their asbestos and asbestos products, and to provide detailed and adequate warnings concerning any and all dangers, characteristics, and potentialities of their asbestos and asbestos-containing products.

12. It was the continuing duty of the defendant corporations to advise and warn purchasers, consumers, users, and prior purchasers, consumers, and users of all dangers, characteristics, potentialities and defects discovered subsequent to their initial marketing or sale of their asbestos and asbestos-containing products.

13. Yet, nevertheless, wholly disregarding the aforesaid duties, the defendant corporations breached their duties by: (a) failing to warn the plaintiff's decedent of the dangers, characteristics, and potentialities of their asbestos-containing product or

products when the defendant corporations knew or should have known that exposure to their asbestos-containing products would cause disease and injury; (b) failing to warn the plaintiff's decedent of the dangers to which he was exposed when they knew or should have known of the dangers; (c) failing to exercise reasonable care to warn the plaintiff's decedent of what would be safe, sufficient, and proper protective clothing, equipment, and appliances when working with or near or being exposed to their asbestos and asbestos-containing products; (d) failing to provide safe, sufficient and proper protective clothing, equipment and appliances with their asbestos-containing products or products; (e) failing to test their asbestos and asbestos products in order to ascertain the extent of dangers involved upon exposure thereto; (f) failing to conduct such research as should have been conducted in the exercise of reasonable care, in order to ascertain the dangers involved upon exposure to their asbestos and asbestos-containing products; (g) failing to remove the product or products from the market when the defendant corporations knew or should have known of the hazards of exposure to their asbestos and asbestos-containing products; (h) failing upon discovery of the dangers, hazards, and potentialities of exposure to asbestos to adequately warn and apprise

the plaintiff's decedent of said dangers, hazards, and potentialities discovered; (i) failing upon discovery of the dangers, hazards, and potentialities of exposure to asbestos to package said asbestos and asbestos-containing products so as to eliminate said dangers, hazards, and potentialities; and, (j) generally using unreasonable, careless, and negligent conduct in the manufacture, fabricating, supply, or sale of their asbestos and asbestos-containing products.

14. As a direct and proximate result of the unreasonable, careless, and negligent conduct of the defendant corporations, plaintiff's decedent, Donald Pearson, contracted lung cancer and other asbestos-related disease which substantially contributed to his death on April 25, 2002. Prior to his death, Donald Pearson, endured great physical pain and suffering, and incurred substantial medical expenses in connection with the treatment of his lung cancer and other asbestos-related disease. Furthermore, the Estate of Donald Pearson has incurred funeral expenses and other expenses occasioned by his death and has been deprived of his capacity to earn money during his probable working life.

15. The defendants knew, or with the reasonable exercise of care, should have known of the dangerous characteristics, properties, and potentialities of

asbestos and asbestos-containing products.

WHEREFORE, Plaintiff, Beverly Pearson, as Administrator of the Estate of Donald Pearson, demands compensatory damages, plus interest and costs.

COUNT II

BREACH OF EXPRESSED AND IMPLIED WARRANTIES

16. The allegations of Count I are hereby incorporated by reference.

17. The plaintiff's decedent was a person whom the defendants could reasonably have expected to use, consume, or be affected by the defendants' asbestos and asbestos-containing products within the meaning of Massachusetts General Laws c. 106, sec. 2-318, as the defendants knew or had reason to know that their asbestos-containing products would be used in the insulation or construction industry and that individuals such as the plaintiff's decedent would come in contact with such asbestos materials.

18. The defendants expressly and impliedly warranted that the asbestos and asbestos-containing products described above were merchantable, safe, and fit for their ordinary purposes, and the particular purposes and requirements of plaintiff's decedent.

19. The defendants had reason to know of the particular purposes for which their asbestos and asbestos-containing products would be used.

20. The plaintiff's decedent relied upon the defendants' skill or judgment in selecting suitable insulation or construction products for safe use.

21. The defendants breached these warranties, in that the asbestos-containing products they sold were not merchantable, safe, suitable, or fit for their ordinary or particular purposes.

22. As a direct and proximate result of the defendants' breach of warranties, the plaintiff's decedent, Donald Pearson, contracted lung cancer and other asbestos-related disease which substantially contributed to his death on April 25, 2002. Prior to his death, Donald Pearson endured great physical pain and suffering, and incurred substantial medical expenses in connection with the treatment of his lung cancer and other asbestos-related disease. Furthermore, the Estate of Donald Pearson has incurred funeral expenses and other expenses occasioned by his death and has been deprived of his capacity to earn money during his probable working life.

WHEREFORE, plaintiff, Beverly Pearson, as Administrator of the Estate of Donald Pearson, demands compensatory damages, plus interest and costs.

COUNT III

CONSPIRACY OR CONCERT OF ACTION: METROPOLITAN ONLY

23. Plaintiff realleges the allegations of Paragraphs 1 through 22 of the Complaint, and by

reference, makes them part of this Count.

24. In addition, during the time period set forth in Paragraph 4, the plaintiff's decedent was exposed to and did inhale and/or ingest asbestos dust, fibers, and particles, which dust, fibers, and particles came from the asbestos or asbestos-containing products which were mined, milled, manufactured, fabricated, supplied and/or sold by the Johns Manville Corporation (hereinafter "Manville") and/or Raymark Industries, Inc. (hereinafter "Raymark").

25. The defendant, Metropolitan Life Insurance Company, (hereinafter "Metropolitan") together with Manville, Raymark and other persons and entities, known and unknown at times relevant hereto, engaged in a conspiracy or concert of action to inflict injury on the plaintiff's decedent, and to withhold, alter, suppress and misrepresent information about the health effects of asbestos exposure. One or more of said conspirators did cause tortious injury to the plaintiff's decedent in the course of or as a consequence of the conspiracy or concert of action. At least the following enumerated acts were undertaken by the conspirators in the course of and in furtherance of the conspiracy or concert of action.

a. In 1932, Metropolitan, through its agents, Dr. Anthony Lanza and others, assisted

Manville with medical examinations of over 1,000 employees of Manville's factory in Manville, New Jersey. The report of this study shows that a large percentage of the employees suffered from asbestosis including employees not directly involved in the manufacturing process. This 1932 medical survey was not published in the medical literature and, therefore, was unavailable to scientists studying the issue of asbestos disease. Further collaboration between Manville and Metropolitan continued the cover-up.

- b. Beginning in approximately 1934, Manville, through its agents, Vandiver Brown and Attorney J.C. Hobart, suggested to Dr. Anthony Lanza, Associate Director of Metropolitan, (insurer of Manville and Raymark) that Lanza publish a study on asbestosis in which Lanza would affirmatively misrepresent material facts about the health consequences of asbestos exposure. This was accomplished through intentional deletion of Lanza's description of asbestosis as "fatal" and through other selective editing that affirmatively misrepresented asbestosis as a disease

process less serious than it actually is and was known to be. As a result, Lanza's study was published in the medical literature in this misleading fashion in 1935. The conspirators were motivated, in part, to effectuate this fraudulent misrepresentation and fraudulent nondisclosure by the desire to influence proposed legislation to regulate asbestos exposure and to provide a defense in lawsuits involving Manville, Raymark and Metropolitan, as insurer. Furthermore, upon information and belief, it is alleged that Metropolitan, at all times relevant hereto, had substantial monetary investments in Manville and Raymark, among other asbestos product manufacturers and distributors.

- c. In 1936, the conspirators or some of them including Manville, Raymark, and other companies entered into an agreement with the Saranac Laboratories in New York. Under this agreement, these conspirators acquired the power to decide what information Saranac Laboratories could publish about asbestos disease and to control in what form such publications were to occur. This agreement gave these conspirators power to

affirmatively misrepresent the results of the work at Saranac, and also gave these conspirators power to suppress material facts included in any study. On numerous occasions thereafter, the conspirators exercised their power to prevent Saranac scientists from disclosing material scientific data, resulting in numerous misstatements of fact being made at scientific meetings.

- d. By November 1948, or earlier, Manville, Metropolitan (acting through Dr. Lanza), Raymark, and others decided to exert their influence to materially alter and misrepresent material facts about the substance of research started by Dr. Leroy Gardner at the Saranac Laboratories beginning in 1936. Dr. Gardner's research involved carcinogenicity of asbestos in mice and also included an evaluation of the health effects of asbestos on humans with a critical review of the then-existing standards of dust exposure for asbestos and asbestos products.
- e. At a meeting on November 11, 1948, these conspirators and others intentionally and affirmatively determined that Dr. Gardner's

work should be edited to specifically delete material facts about the cancer-causing propensity of asbestos and the health effects of asbestos on humans and they determined that only an edited version would be published. These conspirators thereby fraudulently misrepresented the risks of asbestos exposure to the public, in general, and to the class of persons exposed to asbestos, including the plaintiff's decedent.

- f. As a direct result of influence exerted by the above-described conspirators, Dr. Arthur Vorwald published Dr. Gardner's edited work in the Journal of Industrial Hygiene, AMA Archives of Industrial Hygiene and Occupational Health in 1951 in a form that stressed those portions of Dr. Gardner's work that the conspirators wished stressed, but which omitted references to human asbestosis and cancer, thereby fraudulently and affirmatively misrepresenting the extent of the risks. The conspirators affirmatively and deliberately disseminated this misleading Vorwald publication to university libraries, government officials, agencies and others.

- g. Such action constituted a material affirmative misrepresentation of the material facts involved in Dr. Gardner's work and resulted in creating an appearance that inhalation of asbestos was a less serious health concern than Dr. Gardner's unedited work indicated.

26. Plaintiff further alleges that Metropolitan, Manville, Raymark and/or their predecessors in interest knowingly agreed, contrived, combined, confederated and conspired among themselves to cause plaintiff's decedent injuries, diseases, and/or illnesses by exposing plaintiff's decedent to harmful and dangerous asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products. Metropolitan, Manville, and Raymark further knowingly agreed, contrived, combined, confederated and conspired to deprive plaintiff's decedent of the opportunity of informed free choice as to whether to use said asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products or to expose themselves to said dangers. In this connection, plaintiff has sued the Metropolitan Life Insurance Company in its capacity as a conspirator and because it committed tortious act in concert with others pursuant to a

common design. Metropolitan, Manville, and Raymark committed the above-described wrongs by willfully misrepresenting and suppressing the truth as to the risks and dangers associated with the use of and exposure to Manville's and/or Raymark's asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products.

27. In furtherance of said conspiracies, Metropolitan, Manville, and Raymark performed the following overt acts:

- a. for many decades, Metropolitan, individually, jointly and in conspiracy with Manville and Raymark, have been in possession of medical and scientific data, literature and test reports which clearly indicated that the inhalation of asbestos dust and fibers resulting from the ordinary foreseeable use of said asbestos-containing products and/or machinery requiring or calling for the use of asbestos or asbestos-containing products were unreasonably dangerous, hazardous, deleterious to human health, carcinogenic, and potentially deadly;
- b. despite the medical and scientific data, literature and test reports possessed by and

available to Metropolitan, individually and in conspiracy with Manville and Raymark, fraudulently, willfully and maliciously:

- (i) withheld, concealed and suppressed said medical and scientific data, literature, and test reports regarding the risks of asbestosis, cancer, mesothelioma and other illnesses and diseases from plaintiff's decedent who were using and being exposed to Manville or Raymark asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products;
- (ii) caused to be released, published and disseminated medical and scientific data, literature, and test reports containing information and statements regarding the risks of asbestosis, cancer, mesothelioma and other illnesses and diseases, which Metropolitan, Manville, and Raymark knew were either incorrect, incomplete, outdated and misleading; and
- (iii) distorted the results of medical examinations conducted upon workers such as plaintiff's decedent who were

using asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products and being exposed to the inhalation of asbestos dust and fibers by falsely stating and/or concealing the nature and extent of the harm to which workers such as plaintiff's decedent suffered; and (iv) failing to adequately warn the plaintiff's decedent of the dangers to which he was exposed when they knew of the dangers.

- c. by the false and fraudulent representations, omissions, failures, and concealments set forth above, Metropolitan, Manville, and Raymark, individually, jointly, and in conspiracy with each other, intended to induce the plaintiff's decedent to rely upon said false and fraudulent representations, omissions, failures, and concealments, to continue to expose themselves to the dangers inherent in the use of and exposure to their asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products.

Said misrepresentations were false, incomplete, and misleading and constitute negligent misrepresentations as defined by Sections 311 and 522 of the Restatement (Second) of Torts.

28. Plaintiff's decedent reasonably and in good faith relied upon the false and fraudulent representations, omissions, failures, and concealments made by Metropolitan, Manville, and Raymark regarding the nature of their asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products.

29. As a direct and proximate result of the conspiracy and concert of action between Metropolitan, Manville and Raymark, the plaintiff's decedent was deprived of the opportunity of informed free choice and connection with the use of and exposure to Manville and Raymark's asbestos and asbestos-containing products, and therefore continued to work with and be exposed to the co-conspirator corporation's asbestos and asbestos-containing products and as a result contracted asbestos-related diseases and other conditions, and/or aggravated pre-existing conditions, as a result of which the plaintiff's decedent suffered a dramatic reduction of his life expectancy, incurred great mental and physical pain and suffering, sustained lost wages and lost earning capacity, incurred medical expenses, and

their enjoyment of life has been greatly impaired, which damages are continuing in nature.

WHEREFORE, plaintiff, Beverly Pearson, as Executrix of the Estate of Donald Pearson, demands compensatory damages, plus interest and costs.

COUNT IV

UNDERTAKING OF SPECIAL DUTY: METROPOLITAN ONLY

30. Plaintiff realleges the allegations of Paragraphs 1 through 29 of the Complaint, and by reference, makes them part of this Count.

31. Defendant Metropolitan, through its Policyholders Service Bureau, undertook duties owed by entities which manufactured, sold, supplied, or distributed asbestos-containing products, including Manville and Raymark to plaintiff's decedent by testing of asbestos workers and the conduct of scientific studies. These duties included, without limitation, as follows:

- a. to test fully and adequately for health risks concomitant to the normal and intended use of their products; and
- b. to instruct fully and adequately in the use of their products so as to eliminate or reduce the health hazards concomitant with their normal or intended use.

In undertaking these duties, Metropolitan knew or should have known that it was providing testing

services for the ultimate protection of third persons, including the plaintiff's decedent.

32. In both conducting said tests and publishing their alleged results, Metropolitan failed to exercise reasonable care to conduct or publish complete, adequate, and accurate tests of the health effects of asbestos. Metropolitan also caused to be published intentionally false, misleading, inaccurate and deceptive information about the health effects of asbestos exposure. In so acting, Metropolitan breached their special responsibility by failing to exercise reasonable care to protect their undertaking, as described above.

33. The plaintiff's decedent unwittingly but justifiably relied upon the thoroughness of Metropolitan's tests and information dissemination, the results of which Metropolitan published in leading medical journals.

34. In failing to test fully and adequately for the adverse health effects from exposure asbestos; in delaying the publication of such results; and in falsely editing such results as were obtained; in suppressing relevant medical inquiry and knowledge about those hazards to promote the sale and distribution of asbestos as a harmless product; and in collaborating with entities which manufactured, sold, supplied, or distributed asbestos-containing products,

including Manville and Raymark materially to understate the hazards of asbestos exposure, all for pecuniary profit and gain, Metropolitan acted recklessly, wantonly, and in calculated disregard for the welfare of the general public, including the plaintiff's decedent.

35. As a direct and proximate result of Metropolitan's failures to conduct or accurately publish adequate test or disseminate accurate and truthful information, after undertaking to do so; (i) the risk of harm to the plaintiff's decedent from asbestos exposure was increased, and (ii) plaintiff's decedent contracted asbestos-related diseases and other conditions, and/or aggravated pre-existing conditions, as a result of which the plaintiff's decedent suffered a dramatic reduction of their life expectancy, incurred great mental and physical pain and suffering, sustained lost wages and lost earning capacity, incurred medical expenses, and their enjoyment of life has been greatly impaired, which damages are continuing in nature.

WHEREFORE, plaintiff, Beverly Pearson, as Executrix of the Estate of Donald Pearson, demands compensatory damages, plus interest and costs.

COUNT V

WRONGFUL DEATH

36. The allegations of Counts I through IV are

hereby incorporated by reference.

37. As a result of working with, around or near others who worked with, around or near asbestos materials supplied by defendants to plaintiff's decedent's employers, plaintiff's decedent contracted lung cancer and other asbestos-related disease, which substantially contributed to his death on April 25, 2002.

38. Plaintiff's decedent is survived by his family, who by reason of said death has been deprived of income, services, protection, care, society, companionship, comfort, guidance, counsel, and advice of the said plaintiff's decedent. In addition, the estate of plaintiff's decedent has incurred reasonable funeral and burial expenses as a result of the death of plaintiff's decedent.

WHEREFORE, the plaintiff, Beverly Pearson as Administrator of the Estate of Donald Pearson, demands compensatory and punitive damages, plus interest and costs.

COUNT VI

MALICIOUS, WILLFUL, WANTON AND RECKLESS

CONDUCT OR GROSS NEGLIGENCE

39. The allegations of Counts I through V are hereby incorporated by reference.

40. As early as 1929, the defendants, or some of them, possessed medical and scientific data clearly

indicating that asbestos and asbestos-containing products were hazardous to the health and safety of Donald Pearson and others in his position.

41. The defendants, or some of them, during the 1930's, 1940's, 1950's, and 1960's became possessed of voluminous medical and scientific data, studies, and reports, which information conclusively established that asbestos and asbestos-containing products were hazardous to the health and safety of Donald Pearson and all other persons exposed to the products.

42. The defendants, or some of them, since the 1930's have had numerous workmen's compensation claims filed against them by former asbestos workers or employees, or knew such claims were filed against asbestos product suppliers and manufacturers.

43. Prompted by pecuniary motives, the defendants ignored and failed to act upon such medical and scientific data and conspired to deprive the public, and particularly the users, from access to said medical and scientific data, thereby depriving them of the opportunity of free choice as to whether or not to expose themselves to the asbestos products of the defendants.

44. The defendants acted maliciously, willfully, wantonly, and recklessly, or with gross negligence, by continuing to market their asbestos products, with reckless disregard for the health and safety of

plaintiff's decedent and other users or consumers, knowing the dangerous characteristics and propensities of said asbestos products, but still depriving those affected by the dangers from information about those dangers.

45. Because the defendants acted maliciously, willfully, wantonly, and recklessly, or with gross negligence, in marketing their hazardous asbestos and asbestos-containing products, in ignoring the medical and scientific data which was available to them, and depriving consumers, users, and the general public from that medical and scientific data, the plaintiff, Beverly Pearson as Administrator of the Estate of Donald Pearson is entitled to punitive damages.

WHEREFORE, the plaintiff, Beverly Pearson, as Administrator of the Estate of Donald Pearson demands punitive damages, in addition to the damages demanded in Counts I, II, and III, plus interest and costs.

COUNT VII

LOSS OF PARENTAL SOCIETY

46. Plaintiff realleges the allegations of Paragraphs 1 through 45 of the Complaint, and by reference, makes them part of this Count.

47. Alice Smart is the minor daughter of Donald Pearson, and at all pertinent times was the minor daughter of Donald Pearson.

48. As a direct and proximate result of the

breach of duty and wrongdoing of the defendant and the resultant injury of Donald Pearson, as more particularly described in Counts I through VI, Alice Smart suffered a loss of her father's services, society, and companionship, and has suffered great mental anguish.

WHEREFORE, the plaintiff, Alice Smart, demands compensatory damages plus interest and costs.

Plaintiff demands a trial by jury on all issues.

DATED: April 22, 2005

Respectfully submitted,



Allyson S. Hauck
(BBO #659547)
THORNTON & NAUMES, LLP
100 Summer Street, 30th floor
Boston, MA 02110
(617) 720-1333

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS BEVERLY PEARSON, as Administrator of the Estate of DONALD PEARSON; and FLORA SMART, as Parent and Next Friend of ALICE SMART

DEFENDANTS METROPOLITAN LIFE INSURANCE COMPANY, et al.

(b) County of Residence of First Listed Plaintiff Suffolk
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number) (617) 720-1333
Allyson S. Hauck, Esq.
THORNTON & NAUMES, LLP, 100 Summer St., Boston 02110

Attorneys (If Known)

05 CV 10812

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- | | | | | | |
|--|--------------------------------|--------------------------------|--|--------------------------------|---|
| <input checked="" type="checkbox"/> 1 Citizen of This State | <input type="checkbox"/> 1 PTF | <input type="checkbox"/> 1 DEF | <input type="checkbox"/> 4 Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 PTF | <input type="checkbox"/> 4 DEF |
| <input type="checkbox"/> 2 Citizen of Another State | <input type="checkbox"/> 2 PTF | <input type="checkbox"/> 2 DEF | <input type="checkbox"/> 5 Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 PTF | <input checked="" type="checkbox"/> 5 DEF |
| <input type="checkbox"/> 3 Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 PTF | <input type="checkbox"/> 3 DEF | <input type="checkbox"/> 6 Foreign Nation | <input type="checkbox"/> 6 PTF | <input type="checkbox"/> 6 DEF |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input checked="" type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	FEDERAL TAX SUITS <input type="checkbox"/> 370 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN

- (Place an "X" in One Box Only)
- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Asbestos Litigation 28 USC, 1332, 1441
 Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
 DEMAND \$ 75,000.00
 CHECK YES only if demanded in complaint:
 JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Weiner DOCKET NUMBER MDL 875 E.D. Pa.

DATE

SIGNATURE OF ATTORNEY OF RECORD

April 22, 2005

FOR OFFICE USE ONLY

THORNTON & NAUMES, LLP

Allyson S. Hauck, Esq.

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) BEVERLY PEARSON, as Administrator of the Estate of DONALD PEARSON; and FLORA SMART, as Parent and Next Friend of ALICE SMART

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- ☐ I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- ☒ II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.
- ☐ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 480, 490, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.

05, 10812

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

None

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES ☐ NO ☒

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES ☐ NO ☒

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐ NO ☐

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES ☐ NO ☒

7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES ☐ NO ☒

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division ☐ Central Division ☐ Western Division ☐

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division ☒ Central Division ☐ Western Division ☐

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES ☐ NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Allyson S. Hauck, Esq.

ADDRESS Thornton & Naumes, LLP, 100 Summer St., 30th fl., Boston, MA 02110

TELEPHONE NO. (617) 720-1333